

## Lewis County Planning Commission **Public Meeting**

Lewis County Courthouse  
Commissioners' Hearing Room – 2nd Floor  
351 NW North St – Chehalis 98532

### **March 13, 2012 - Meeting Notes**

**Planning Commissioners Present:** Clint Brown, Richard Tausch, Jim Lowery, Bob Guenther, Russ Prior, Mike Mahoney, Arny Davis

**Staff Present:** Glenn Carter, Lynn Deitrick, Jerry Basler, Pat Anderson

**Others Present:** Please see sign in sheet

#### **Handouts/Materials Used:**

- Agenda
- Meeting Notes from January 24, 2012
- Assessor Recommendations on Open Space Applications
- Staff Report on Open Space Tax Program
- Helsum LLC Application
- Helsum Staff Report
- Smarz Application
- Smarz Staff Report

#### **1. Call to Order**

Chairman Lowery called the meeting to order at 7:00 and introduced Mr. Brown and asked him to tell a little about himself. Mr. Brown stated he would be representing District 3. He is originally from Ft. Worth, Texas and lived in Houston for 25 years where he practiced law. He and his wife bought property in Randle about three years ago and Bill Russell suggested Mr. Brown apply for Bill's position on the Planning Commission. He stated he is looking forward to working with the other commissioners.

#### **2. Approval of the Agenda**

There were no additions or corrections and the agenda was approved.

#### **3. Approval of Meeting Notes from January 24, 2012.**

There were no additions or corrections to the meeting notes and they were approved.

#### **4. Old Business**

##### **A. Update on Shorelines Master Plan**

Mr. Basler stated that last October Chrissie Bailey from DOE came to the Planning Commission to explain the process for the mandated Shorelines Master Plan (SMP). Since that time, Lewis County and the cities of Chehalis, Centralia, Morton and Winlock decided to pool their grant monies to hire a consultant to update the SMP.

Five consultants submitted proposals and they all were interviewed by a representative from each jurisdiction. After scoring each consultant, a recommendation was made to Mr. Bob Johnson and AHBL

from Tacoma was selected to do the SMP. They have a lot of experience in flood plains which will be one of the biggest issues to consider for the SMP. In October Mr. Basler and Mr. Pierson attended a training session put on by DOE for the SMP and it appears that the flood plain will include most of the valley when the new FEMA maps are done.

Mr. Basler stated there will be six phases for the SMP and Lewis County's deadline is June of 2014. Mr. Basler would like the plan to be completed by December of 2013 to allow six months for review by DOE.

AHBL has experience in negotiating with Ecology, working in flood plains and working with jurisdictions in rural areas similar in population size to Lewis County.

The Personal Services Agreement is being finalized and then the agreement must be hammered out with Ecology for the grant. It will then go to the Board of County Commissioners for approval and the work can begin.

Mr. Basler stated during the first two phases of the SMP there will not be much Planning Commission involvement. Those phases will be for the inventorying and characterization of the shorelines in all of Lewis County. When the components of the plan come forward there will be public hearings and involvement by the Planning Commission and the general public. Typically there is a Technical Advisory Committee and in many jurisdictions that would be the Planning Commission. Once the consultants are on board those types of decisions will be made.

Commissioner Guenther asked if the changes made to the SMP would be because of the new FEMA maps. Mr. Basler stated if the SMP is done before the maps are done there will need to be some "negotiating" with DOE for Centralia's and Chehalis' point of view.

Mr. Carter stated he is a member of the FEMA working group, which includes Centralia, Chehalis, businesses in Chehalis and representatives of FEMA. About a year ago FEMA developed a tentative map that was to be noticed to become the final map within six months. That was held up by a number of senators and representatives who took the position that the hydrological model that was used by FEMA was flawed because it failed to take into account levees that were not certified as 100-year levees. The levee at the airport and the levees on the Skookumchuck are not certified as 100-year levees. Due to that, FEMA had to develop a new hydrological methodology for dealing with the differences in the flow and in the accumulation of the water in the floodway by virtue of the unaccredited levees. They have come up with three alternative methodologies; however, in order to apply those methodologies throughout the United States it will take a great deal of time and a great number of resources. As a result there will probably not be another map for at least twelve months. The likelihood is that the maps will still have a flood way in Centralia and Chehalis that will essentially go from valley wall to valley wall.

Chairman Lowery asked if the SMP is completed and then the maps are released, would the flood plain issues need to be dealt with again. Mr. Basler stated there will be a 200' setback from shorelines of statewide significance and DOE will also include flood plains and associated wetlands, which would basically cover the whole valley.

Commissioner Prior stated right now the shoreline is whatever the high water is. In a flood the shoreline is valley wall to valley wall. He asked if that is going to be the shoreline. Will the flood determine the shoreline?

Mr. Carter stated there has been a monumental change since 1981. The maps from 1981 show a very narrow flood way. The new proposed maps show an extremely broad flood way. Flood ways are different from flood plains. Flood plain is broader; if you compress the two sides, at the point where the water is raised one foot then that becomes the flood way boundary. In Chehalis and Centralia, FEMA claims that the flood way is very close in size to the flood plain. On the 1981 maps, which are the maps we are using now, it is very narrow. The definition for purposes of shorelines is "flood plain" and they use and incorporate the FEMA definition. When we adopt these maps the shorelines will be further out than it is under the 1981 maps. Even if we get the maps to the point where we want them to be, we will get a new biological opinion which will be based on the endangered species act and that will probably be even more restrictive as to what can be done in the flood plain.

Commissioner Mahoney asked if there would be pressure put on Lewis County to carve off a big section of Chehalis and bulldoze the buildings.

Mr. Carter stated he did not think so. The problem is that once the flood way has been defined, if a building endures 50% accumulative damage from any event (fire, flood, earthquake, etc.) it cannot be repaired. At that point the use of that land involuntarily changes. Commissioner Mahoney stated those properties will not be insurable. Mr. Carter stated federal insurance would be available, but probably not smaller, independent insurance.

Commissioner Mahoney stated there are people that live in the valley that have to be taken into consideration. Mr. Carter stated the intent of the agencies and the Tribe is to restore the river flood plain to what it was at some point in the distant past.

Commissioner Brown asked if the FEMA maps take a year to 18 months to complete that will put the process into September of 2013. At that point will the whole shoreline management plan need to be done again? Mr. Basler stated he didn't know but it is a possibility. Chehalis, Centralia and Lewis County would have to work with DOE.

Commissioner Mahoney stated rules will not be written specific to where the boundary is but what can or cannot be done within the property that is defined as the flood plain. Mr. Basler stated that is the issue: the associated wetlands and the 200' setback beyond that will cover the whole valley. Commissioner Mahoney stated we won't have a choice but to adopt the maps.

Mr. Carter stated the key points of controversy are the measurements of the volume of water at the Doty gauge. The volume of water was measured at a very high level at that gauge. The hydrologist that the County and the cities of Chehalis and Centralia hired as an expert believes that the figure is grossly exaggerated. We are working through Congresswoman Herrera-Buetler and Senator Murray's office to get that changed and to have USGS look at that figure and adjust it in light of what the hydrologist has said to be the appropriate reading. If they were to accept that change, it would radically change the boundaries of the flood way in the valley. If they do not accept the change, at the time that they put out the maps for the second publication, we would appeal the maps. Unfortunately that appeal would not stay the application of the maps as adopted by FEMA and we would be required to go off of the FEMA maps until, or if and when, the determination of those maps is reversed.

Commissioner Prior volunteered to be on a Technical Advisory Committee, as a liaison between the Committee and the Planning Commission. As a hydro geologist he understands the technical issues.

Commissioner Mahoney stated he would not like to see a large technical advisory committee. The ARL committee was large and did a great job but they felt insulted by the process and said they would not serve on another committee like that again.

Chairman Lowery agreed. He stated there was little or no value to the input based on what the GMA laws were. He would not like to put people in the position of putting in that much time and then not having any value to what they contributed.

#### B. Update on Water Resource Inventory Areas (WRIA)

Mr. Basler stated the WRIA is about water supply and management and the consideration of closures in the watershed areas 25 and 26. Mr. Basler and Commissioner Grose are in a planning unit that includes Lewis County, Cowlitz County, individuals, and the Tribes, who all have voting rights. Another sub-unit has been going stream by stream to determine the restrictions already in place or if restrictions are needed. Lewis County is requesting no more restrictions. Winlock and the Lackamas Creek has not been completed yet. DOE and WDFW have one point of view and the City of Winlock has another about the ability to drill new wells, how much water can be drawn and other issues.

Mr. Basler included a table in the packet that shows the WRIA progress, which is about a month behind. This work will be an amendment to the ~~Graves~~ Grays-Eckelman Watershed Management Plan that came out earlier.

Mr. Basler explained that “closures” means no more drilled wells and withdrawn water within certain proximities. Commissioner Prior asked if Ecology has been making any noises about limiting the number of exempt wells that can be drilled – private water wells for domestic use which are exempt from the water rights process.

Mr. Carter stated they came up with a proposal about two years ago which tried to limit parts of Lewis County to a certain number of additional exempt wells every year. When Commissioner Grose saw the proposal the County stepped up its opposition to the limits that were being imposed. That set back this process a couple of years. He does not know what the proposal is now as to the number of exempt wells for each area within the WRIA. Every area was based on OFM’s population projections over the 20-year planning horizon. Lewis County opposed the proposal because the number was very small. There is an obligation under GMA to make sure that the rural economy can continue to grow and be preserved.

Mr. Basler stated Winlock will be critical because where the plan is now there will be no new wells.

Commissioner Guenther stated when the Chehalis power plant was being sited there were discussions about drawing water out of the aquifer in order to service the water needs of that plant. Commissioner Guenther suggested putting a dry unit on it for the condensers. He remembered talk about the aquifer dropping over the last forty or fifty years from all the water usage. He believed that was true because a number of years ago the county drilled an artesian well on SR 508 and at that time the water boiled out over a foot high. Today that water is down in the casing, so there has been an effect on the aquifer based on what would be needed for the power plant. He asked if there were maps of the aquifer.

Mr. Basler stated he would check on the maps. He noted that the primary focus for Ecology is stream flows.

#### C. Update on Mineral Lake

Mr. Carter stated in December 2010 the Planning Commission voted against the idea of rezoning Mineral Lake and the BOCC reversed that and rezoned the Mineral Lake property. That property is about 830 acres with an additional 1200 acres that is related to it. The 1200 acres, by agreement of the developer called Forecastle, would be put in forestry reserve in perpetuity protected by CC & Rs, and there would be no residential use on that property. The remaining 830 acres were put in a classification that is part of the Forest Lands of Long-Term Commercial Significance which, under GMA, is part of the resource land that the county has to preserve.

There are two classifications of Forest Resource Land (FRL): Forest Resource Land of Long Term Commercial Significance and Forest Resource Land of Local Importance. They are both managed as forest resource land. The Local Importance land is land that can be developed in 20 acre parcels; the Long Term Commercial Significance can only be developed in 80 acre parcels. The decision of the Board was appealed by The Friends of Mineral Lake. They appealed on the basis that the interpretation that was given by the Board of what is local importance is wrong and as a result that land should have been kept as forest resource land of long term commercial significance.

The appeal was successful at the Growth Board and the Growth Board reasoned that they could not challenge the Boards' interpretation of its own code. They did not challenge what is meant by 5000 contiguous acres, rather, they said they could regulate the impact or effect of that interpretation. They said there was an inherent inconsistency in the map and that the larger parcels were forest lands of long term commercial significance as well as a number of smaller parcels. Then there was the Mineral Lake property of 830 acres that was local importance. They thought those seemed like similarly situated properties and asked why they weren't designated local importance.

The Board issued an order sending it back to Lewis County on compliance. The Board said there were three options: amend the interpretation of 5000 contiguous acres; look at similarly situated properties and designate those also as forest resource land of local importance; or change the development regulations. Lewis County appealed to the Superior Court in Thurston County. The brief argued that the Board's reading of the regulation is incorrect. Lewis County made its designation of FRL in 1996 and 1997. Those were not appealed under the GMA as interpreted by the Washington Courts. If it is not appealed, it is deemed compliant – forever – unless there is a change in the law. If they are asking us to locate similarly situated properties and to reopen the designations of those properties that is violating the finality of those designations. It also violates the rights of those land owners. The land owners have the option if they wish to apply for forest resource land of local importance but they have chosen not to do so. It is inherent in the regulation that they have the right to opt in if they wish to. That regulation was adopted as Ordinance 1151 in 1996. It was not appealed. The fact that the ordinance leaves it up to the land owner as to whether they opt in or not is something that is also final and deemed compliant with the GMA. The options that we are being given by the Growth Board in order to comply with this would require us to set aside the designations that have become final and that is not appropriate. Or, to set aside the regulation that has become final and compliant and that is not appropriate. The County has hired Mike McCormick to assist it in developing its compliance plan. We will come to you with that

compliance plan very soon. Mr. Carter provided a draft to Bob Johnson, Jerry Basler and Mike McCormick.

In 1996 when the county designated land as FRL of long term commercial significance it made the decision that that land met those criteria and by not designating it as local importance the county made a decision. Mr. Carter stated the planning commission and the BOCC had no choice but to designate land as FRL of long term commercial significance initially because local importance was an opt-in – it can only be granted if the land owner chooses it. When the county made the original designations in 1996 and 1997 all of it was FRL of long term commercial significance because there was no alternative. There was no “original understanding”.

Mr. Carter continued to say that after the county had the hearing at the Growth Board and the decisions came down from the Growth Board, Steve Stinson contacted Mr. Carter and stated his dad’s land was designated FRL of local importance. Mr. Stinson provided a resolution and a map showing that in 1997 his father’s land was designated as FRL of local importance. It was not in the records. Staff went back through the records and discovered there are about 12 or 15 smaller parcels (less than 5000 acres) that were actually designated as FRL of local importance at the opt-in application of those land owners. In 2000 when the map was digitized with GIS the county failed to recognize that – it made a mapping error – and those lands were not designated as FRL of local importance but as FRL of long term commercial significance. As part of compliance, those lands will be identified and corrected.

The other side will file their response to the brief and there will be a hearing before the Thurston County Superior Court at the end of May. It will most likely be appealed to the Court of Appeals. Mr. Carter stated he could provide a copy of the brief.

Commissioner Brown asked Mr. Carter what he thought the county’s chances were for the appeal in Superior Court and in the Court of Appeals. Mr. Carter thought the county had a good chance of prevailing at Superior Court but at the Court of Appeals it will depend on the panel of judges.

Chairman Lowery asked if the mapping error would be part of the compliance order. Mr. Carter stated yes, it would be part of the compliance process. The error occurred because the county went to GIS and digitized the maps and GIS was not informed of the status of those lands.

Chairman Lowery stated it might be a precedent for the Mineral Lake change. Mr. Carter stated those properties are remote from any other FRL, and it still needs to be addressed in a different letter.

## **5. New Business**

### **A. Workshop on Public Benefit Rating System**

Mr. Deitrick stated the Assessor has jurisdiction over the open space but Title 17 states the Planning Commission will hold the public hearing and send the recommendation to the BOCC.

The purpose of the Public Benefit Rating System is tax relief for open space. There is a committee of which Mr. Deitrick and Commissioner Mahoney is a part. The Commissioners’ packets included a staff report from Ms. Dianne Dorey, Lewis County Assessor recommending approval of the two applications. One application is from Helsum LLC for 33.40 acres in the agricultural resource land (ARL) designation. The second application is from Robert Smarz, 10.10 acres also in the ARL designation. Other details and characteristics of both properties are in the application.

The recommendation is that the Planning Commission holds a public hearing, which is requested for April 10, 2012.

Chairman Lowery stated under the requirements of GMA that open space and recreation is encouraged and access to natural resource lands is to be increased. That means to Chairman Lowery that the land should be made available to the public for recreation. One application states there is no public access.

Mr. Deitrick stated one of the conditions to get points for a tax reduction is open space. That can be visual, or there can be access if you stay within the ordinary high water mark. Open space means "open" but the land would not necessarily be available for public use. There are also points for offering the space to be available to the public.

Commissioner Mahoney stated the state has recognized that keeping a lot of property from being developed is a value to the general population and if people are to be encouraged not to develop land, it is proper to get a reduction in taxes because they are seeing a reduction in potential income.

Commissioner Davis made a motion to set a public hearing on open space for April 10, 2012. Commissioner Mahoney seconded. The motion carried.

#### **6. Calendar**

The next meeting will be a public hearing on April 10, 2012 on the Open Space Tax Program.

#### **7. Good of the Order**

Commissioner Mahoney stated the Short Course on Planning was interesting and informative. Chairman Lowery stated he was pleased that every County Planning Commissioner attended.

#### **8. Adjourn**

Commissioner Brown made a motion to adjourn the meeting; Commissioner Guenther seconded. The motion carried and the meeting adjourned at 8:08 p.m.